

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
LAWRENCE L. PRATT,) **Supreme Court #SC86227**
)
Respondent.)

RESPONDENT'S BRIEF

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ATTORNEY FOR RESPONDENT

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STATEMENT OF JURISDICTION

Jurisdiction over this attorney discipline matter is established by Article V, Section 5 of the Missouri Constitution, Supreme Court Rule 5, this Court's common law, and Section 484.040, R.S.Mo. (1994).

STATEMENT OF FACTS

Background and Disciplinary History

Respondent Lawrence Pratt is a forty-one year old attorney who was licensed to practice law in the State of Missouri on October 2, 1992. **App. 44.** At the time of the events charged in the Information, Respondent was employed in the Eastern District Post-conviction Relief Office of the Missouri State Public Defender. **App. 5 (T. 11), 8 (T. 24).** At the time of the hearing before the disciplinary hearing panel on December 19, 2003, Respondent had left the employ of the State Public Defender and was employed in private practice. **App. 25 (T. 90).**

Respondent has received prior discipline. In January 2000, the Region XI Disciplinary Committee issued a letter of admonition to Respondent for failing to act with reasonable diligence and promptness in representing a client and in failing to promptly return the legal file to his client. **App. 124-125.** In June 2002, the Committee issued another letter of admonition to Respondent for failing to provide competent, diligent and prompt representation to a client in a domestic relations case. **App. 126-129.**

The complaint in this case was received by the Office of Chief Disciplinary Counsel on January 13, 2003 and referred to the Region XI Disciplinary Committee for investigation on February 10, 2003. The Region XI Disciplinary Committee investigated the matter, found probable cause and voted to issue an Information against Respondent on March 21, 2003. Informant served the Information in this case on Respondent on June 17, 2003. Respondent filed his response to the Information on July 10, 2003. The

Missouri Advisory Committee appointed a Disciplinary Hearing Panel in this case on September 30, 2003. The Panel held its hearing in this matter on December 19, 2003. The Panel issued its Findings of Facts, Conclusions of Law and Recommendation on May 3, 2004. Thereafter, the Panel *sua sponte* issued its Judgment Nunc Pro Tunc on June 7, 2004.

Complaint

David Hammond pled guilty to burglary and stealing in St. Louis County Circuit Court and was sentenced in criminal cause number 00CR-3810. **App. 60, 79.** On July 2, 2001, Hammond timely filed a pro se Motion to Vacate, Set Aside or Correct the Judgment or Sentence pursuant to Rule 24.035 in criminal cause number 01CR-2307. **App. 80.**

On August 2, 2001, the Court appointed the Eastern District/Post-Conviction Relief Office of the State Public Defender to represent Hammond in his Rule 24.035 action and to file any amended motion within sixty days. **App. 106.** On September 28, 2001, Respondent entered his appearance and requested an additional thirty (30) days to file an amended motion for post-conviction relief pursuant to Rule 24.035(g). The Court granted the motion and gave Respondent an extension until October 31, 2001 to file the amended motion for post-conviction relief. **App. 100-102.**

On October 23, 2001, Respondent filed a pleading entitled “Notice to Court of Delay in Filing of Amended Motion and Motion to Consider Movant’s Subsequently Filed Amended Motion as Timely.” **App. 95-98.** In the pleading, Respondent asserted, *inter alia*, the following:

- that the Office of the Eastern Appellate/PCR Division of the Missouri State Public Defender System did not receive notice of the appointment in the case until September 12, 2001, because the Court’s clerk faxed the notice of appointment to the Court of Appeals for the Eastern District of Missouri;
- that Respondent was assigned to represent Hammond on September 21, 2001;
- that Respondent has reason to believe that there is a meritorious issue requiring review of records not in Respondent’s possession and that Respondent does not anticipate receiving the records until after October 31, 2001;
- that any delay in filing the amended motion is not the fault of Hammond and is “solely attributable to counsel.”

Due to the delay in receiving the records, Respondent requested that the Court consider the subsequently filed amended motion required under Rule 24.035(g) to be timely filed. The pleading was verified and sworn to by Respondent.

On October 31, 2001, the Court denied Hammond’s motion to consider the subsequently filed Amended Motion timely. The judge, however, ruled that the sixty day period to file the amended motion pursuant to Rule 24.035 would begin to run as of September 7, 2001, the date that the Court believed that the Public Defender System received notice of the appointment. **App. 94.** The effect of the ruling was to give Respondent an extension until November 7, 2001 to file the required amended motion on behalf of Hammond.

In addition, the Court set a testimonial hearing on Hammond’s Motion for PCR relief for January 4, 2002. **App. 93.**

On December 6, 2001, Respondent filed a pleading entitled “Second Notice to Court of Delay in Filing of Amended Motion and Motion to Consider Movant’s Subsequently Filed Amended Motion as Timely.” **App. 89-92.** In the pleading, Respondent asserted, *inter alia*, the following:

- Respondent restated his belief that a meritorious issue existed which required a review of medical records not yet received;
- Respondent again stated that the delay in filing the Amended Motion pursuant to Rule 24.035(g) was solely attributable to Respondent; and
- Respondent again requested that the Court consider the subsequently filed Amended Motion timely filed.

The pleading was again verified and sworn to by Respondent. The Court denied the motion. **App. 91.**

On January 4, 2002, the Court held an evidentiary hearing on Hammond’s original motion for post-conviction relief. At the commencement of the hearing, Respondent filed a Verified Motion for Continuance in which he stated that he had received that day in excess of 560 pages of medical records regarding Hammond. He requested a sixty (60) day continuance of the evidentiary hearing in order to allow him to finish collecting medical records and to have Hammond evaluated by a mental health professional. **App. 86-88, 109-110.** The Court denied the motion for continuance. **App. 85, 115.** At the evidentiary hearing, Respondent presented no evidence on behalf of his client. **App. 115.**

On January 8, 2002, the Court entered its Findings of Fact, Conclusions of Law, Order, Judgment and Decree of Court on Movant’s Motion to Vacate, Set Aside or

Correct the Judgment or Sentence Pursuant to Rule 24.035. **App. 79-84.** In the Order, the Court found that Respondent never filed or tendered an Amended Motion for Relief pursuant to the requirements of Rule 24.035 and that he never filed or tendered a statement setting out facts demonstrating what actions were taken by Respondent to determine if all facts and claims were alleged in Movant's pro se motion as required by Rule 24.035. In addition, the Court made the following specific finding with regard to Respondent's conduct in representing Hammond:

“An issue not raised by the Motion, which this court believes needs addressing is the failure of appointed counsel to comply with the requirements of Rule 24.035(e). The Rule requires that ‘Counsel shall ascertain whether sufficient facts supporting the claims are asserted in the motion and whether the movant has included all claims known to the movant as a basis for attacking the judgment and sentence. If the motion does not assert sufficient facts or include all claims known to the movant, counsel shall file an amended motion that sufficiently alleges the additional facts and claims. If counsel determines that no amended motion shall be filed, counsel shall file a statement setting out facts demonstrating what actions were taken to ensure that (1) all facts supporting the claim are asserted in the pro se motion and (2) all claims known to the movant are alleged in the pro se motion. The statement shall be presented to the movant prior to filing. The movant may file a reply to the statement not later than ten days after the statement is filed.’ Appointed counsel for Movant failed to comply with these provisions of the Rule. Instead, appointed counsel sought to extend the time for filing an Amended

Motion beyond the periods specifically delineated in Rule 24.035 contrary to the court's specific rulings to the contrary. Counsel was put on notice that this court did not believe the case of State v. Sanders, 807 S.W.2d 493 (Mo banc 1993) authorized such an extension where the purported need for extension was not due to inadvertence or neglect by counsel. This court finds that counsel's process was a conscious decision as a matter of trial strategy. It was not the result of abandonment of Movant by counsel but rather resulted from a specific conscious choice by Movant's appointed counsel to attempt to circumvent the limited times for filing amendments to the pro se motion under the requirements of Rule 24.035." **App. 74-75.**

The Court denied Hammond's pro se motion to set aside.

Continuing Legal Education Compliance

At the hearing before the Disciplinary Hearing Panel on December 19, 2003, Informant submitted evidence that Respondent had not complied with the Court's Rule 15 MCLE reporting requirements for the reporting years 1996-1997, 1997-1998 and 1998-1999. **App. 123.** Respondent testified that he had never been notified of any delinquency and that he was "current" and "on time" with his annual MCLE reports. **App. 23 (T. 83).** The Disciplinary Hearing Panel directed Respondent to provide evidence of MCLE compliance for the years in question. **App. 24 (T. 85-86).**

On May 3, 2004, the Disciplinary Hearing Panel found that Respondent failed to meet his MCLE reporting requirements for the reporting years 1996-1997, 1997-1998

and 1998-1999 and thereby violated Rule 4-5.5(c). The Panel recommended that Respondent receive an admonition for these violations. On June 7, 2004, the Panel issued a “Judgment Nunc Pro Tunc” containing the same findings and conclusions as the May 3 decision, but with the recommendation that Respondent receive a public reprimand.

On August 12, 2004, the parties filed a Motion to Submit Concurrence in Decision of Disciplinary Hearing Panel with the Court. On November 4, 2004, this Court entered an Order directing the parties to notify the Clerk regarding the status of Respondent’s MCLE compliance. On November 15, 2004, the Office of Chief Disciplinary Counsel filed an Affidavit of Christopher Janku, Director of Programs for the Missouri Bar, confirming that Respondent remained MCLE delinquent for the reporting years 1996-1997 and 1997-1998. Mr. Janku further stated that Respondent did not report hours for the 1998-1999 reporting year.

POINT RELIED ON

I.

**THE SUPREME COURT SHOULD NOT DISCIPLINE RESPONDENT
BECAUSE RESPONDENT DID NOT VIOLATE RULES 4-1.3 AND 4-3.2.**

Rule 4-1.3

Rule 4-3.2

State v. Fowler, 938 S. W.2d 894 (Mo. banc 1997)

Ritter v. State, 119 S.W.3d 603 (Mo. E.D. 2003)

POINT RELIED ON

II.

**THE SUPREME COURT SHOULD NOT DISCIPLINE RESPONDENT
UNDER RULE 4-5.5(c).**

Rule 15

Rule 4-5.5(c)

In re Shelhorse, 147 S.W.3d 79 (Mo. banc 2004)

ARGUMENT

I.

THE SUPREME COURT SHOULD NOT DISCIPLINE RESPONDENT BECAUSE RESPONDENT DID NOT VIOLATE RULES 4-1.3 AND 4-3.2 IN THAT HE DID NOT NEGLIGENTLY FAIL TO COMPLY WITH THE REQUIREMENTS OF RULE 24.035

In the case of State v. Fowler, 938 S.W.2d 894 (Mo. banc 1997) held that any Defendant who files a motion for post-conviction relief must plead their claim for relief with sufficient specificity as to the factual basis of said claim and not merely conclusory statements. Failure to do so will result in dismissal of Defendant's motion for relief.

The official interpretation by the Eastern Appellate/PCR Division, Area 68 of the Missouri State Public Defenders System of the Fowler case was that it applied to all post-conviction motions for relief, whether filed under Rule 29.15 or 24.035. Further, that as Fowler applied to David Hammond's particular motion pending before the trial court, in order to plead the amended motion with the required level of specificity one must not only plead that Mr. Hammond was mentally ill, but also plead his specific diagnosis, length of time he has been ill, past treatment received, how his illness rendered his plea involuntary, and the name of a health care professional who would testify to Mr. Hammond's mental condition at both the time of the alleged crime and at the time he entered his plea. Anything less would be merely conclusory statements and subject Mr. Hammond's motion to immediate dismissal. (T.67-69) See also, the position taken by

Gwenda R. Robinson, District Defender, Area 68, Eastern Appellate/PCR Division,
Missouri State Public Defender's System in Ritter v. State, 119 S.W.3d 603 (Mo.E.D.
2003) for this policies use in another case.

According to health care professionals, it is standard procedure when examining and evaluating an individual's physical or mental condition to first acquire and review their existing medical records to determine past diagnosis and treatments. These records form a significant part of the basis for a health care professional's medical opinions. Therefore, these past records form the only source of information available to plead Mr. Hammond's amended motion with the required specificity.

ARGUMENT

II.

THE SUPREME COURT SHOULD NOT DISCIPLINE RESPONDENT UNDER RULE 4-5.5(c).

This Court has recently confirmed the importance of complying with Continuing Legal Education requirements to assure the public that lawyers are keeping themselves informed on the constant changes in the law. The Court has also found that a lawyer who fails to complete required CLE courses and to file annual reports of compliance has violated Rule 4-5.5(c) and is subject to discipline. *In re Shelhorse*, 147 S.W.3d 79 (Mo. banc 2004).

Respondent testified before the Disciplinary Hearing Panel that “as far as I know I’ve filed my reports when I was supposed to with the CLE credits I was supposed to.”

App. 23 (T. 83).

On November 4, 2004, this Court entered an Order directing the parties to notify the Clerk regarding the status of Respondent’s MCLE compliance. On November 15, 2004, the Office of Chief Disciplinary Counsel filed an Affidavit of Christopher Janku, Director of Programs for the Missouri Bar, confirming that Respondent remained MCLE delinquent for the reporting years 1996-1997 and 1997-1998. Mr. Janku further stated that Respondent did not report hours for the 1998-1999 reporting year, but was not listed as delinquent on the required list sent to the Chief Disciplinary Counsel pursuant to Rule 15.06 because he was not in good standing with regard to his enrollment dues.

On November 10, 2004 Respondent provided the Clerk for the Supreme Court, State of Missouri with a letter indicating that on Thursday, September 30, 2004, he had attended The Missouri Bar/Missouri Judicial Conference 2004 Annual Meeting ethics programs. Respondent further stated that the three hours of CLE Ethics credit brought him in full compliance with his regular CLE and Ethics CLE requirements (**App.139**). Respondent understands that he is in full compliance with his CLE credits.

CONCLUSION

Respondent did not violate Rule 24.035 and fail to diligently represent his client in the post-conviction relief proceedings pending before the Honorable Judge Melvyn W. Wiesman in St. Louis County Circuit Court. In addition, Respondent did not violate Rule 4-5.5(c). This Court should dismiss all pending matters concerning the Respondent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22ND day of March, 2005, two copies of Respondent's Brief and a diskette containing the brief in Microsoft Word format have been sent via First

Class mail to:

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Bill T. Walker

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 2,822 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.

Lawrence L. Pratt, Respondent